
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYLE STEED JEFFS, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING MOTION FOR *JAMES*
HEARING

Case No. 2:16-CR-82 TS

District Judge Ted Stewart

This matter is before the Court on Defendant Nephi Steed Allred's Motion for *James*¹ Hearing. The other Defendants have joined the Motion.

Fed. R. Evid. 801(d)(2)(E) provides: "A statement that meets the following conditions is not hearsay: [t]he statement is offered against an opposing party and . . . was made by the party's coconspirator during and in furtherance of the conspiracy." Under Fed. R. Evid. 801(d)(2)(E), statements by co-conspirators are properly admissible as non-hearsay at trial if the Court determines, by a preponderance of the evidence, that (1) a conspiracy existed; (2) the declarant and the defendant were both members of the conspiracy; and (3) the statements were made in the course of and in furtherance of the conspiracy.² It is the burden of the government to prove each

¹ *United States v. James*, 590 F.2d 575 (5th Cir.) (en banc), *cert. denied*, 442 U.S. 917 (1979).

² *United States v. Urena*, 27 F.3d 1487, 1490 (10th Cir. 1994).

of the elements by a preponderance of the evidence and it is the trial court that determines admissibility.³

“Before making a final ruling on the admissibility of such statements, a district court may proceed in one of two ways: (1) hold a *James* hearing outside the presence of the jury or (2) provisionally admit the evidence but require the Government to connect the statements to the conspiracy during trial.”⁴ A *James* hearing is the “strongly preferred” method in the Tenth Circuit of determining the admissibility of coconspirator statements.⁵ However, this remains a preference and the district court retains discretion.⁶ The Tenth Circuit has held that there is no abuse of discretion in denying a pretrial *James* hearing when the hearing would be lengthy and would entail calling and recalling officers and witnesses in an elaborate and repetitive procedure.⁷

Given the nature of this case, the Court declines to conduct a *James* hearing at this time. Instead, within twenty-one (21) days before trial, the government is directed to submit a written proffer detailing the evidence it believes shows the existence of the conspiracy and the membership of that conspiracy.⁸ In addition, the government shall include a list of statements, or

³ *Bourjaily v. United States*, 483 U.S. 171, 175–76 (1987); *United States v. Owens*, 70 F.3d 1118, 1123 (10th Cir. 1995).

⁴ *United States v. Cornelio-Legarda*, 381 F. App’x 835, 845 (10th Cir. 2010).

⁵ *Urena*, 27 F.3d at 1491.

⁶ *Id.*

⁷ *United States v. Hernandez*, 829 F.2d 988, 994 (10th Cir. 1987).

⁸ The government’s response to the Motion for *James* hearing provides some evidence supporting the existence of a conspiracy, but does not adequately address the membership of the alleged conspiracy.

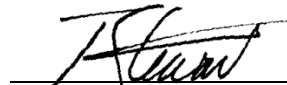
categories of statements, that it will seek to introduce as co-conspirator statements. After review of that proffer, Defendants may re-assert their request for a *James* hearing, if necessary.

It is therefore

ORDERED that Defendants' Motion for *James* Hearing (Docket No. 327) is DENIED WITHOUT PREJUDICE.

DATED this 22nd day of August, 2016.

BY THE COURT:



Ted Stewart
United States District Judge